United Nations A/HRC/29/NGO/83

General Assembly

Distr.: General
9 June 2015

English only

Human Rights Council
Twenty-ninth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Human Rights Now, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[25 May 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.15-09261 (E)
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Japan: Excessive interference of the government/ruling party to the media and journalists

1. Introduction

Recent actions taken by the government and ruling party in Japan have raised serious concerns over the freedoms of press and expression and the right to access information.

First, the 2013 Act on the Protection of Specially Designated Secrets (hereinafter "Secrecy Act") allows the Japanese government to block public access to information designated by the government as a state secret, while also providing severe criminal penalties for those who disclose such secrets. The Act poses a substantial risk of infringing on the freedom of expression and right to information.

Second, the government and ruling party in Japan have escalated their pressure and interference over the media, in particular broadcasting media. Recently, two broadcasting companies, TV Asahi and NHK, were summoned by the investigative committee in the ruling party over the contents of their TV programs.

Third, the government confiscated the passport of a free journalist who merely planned to visit Syria.

Human Rights Now(HRN) is gravely concerned that this series of interferences threatens the autonomy of the media in Japan.[1]

2. Concerns over the Secrecy Act

1) Broadness and Vagueness of the Secrecy Act

Under the Secrecy Act, information that can be designated as secret fall under four broad categories: defense, diplomacy, counterintelligence, and counterterrorism. The heads of government agencies have sweeping powers to designate information falling under these categories as secret. The Act itself does not specify any clear objective criteria for defining what may be designated a secret.

In October 2014, the government finalized a set of guidelines for implementation (hereinafter "Guidelines"). The Guidelines provide certain criteria for designating information as secret.[2] However, the Guideline allows a wide range of information to be designated, and it does not prevent arbitrary designations.

2) Punishments

Article 23(1) of the Secrecy Act punishes unauthorized disclosures of the designated secrets committed intentionally or negligently by those handling "secrets" as part of their duties.

Intentional disclosures are punished by up to ten years imprisonment. Additionally, those who are found complicit in intentional leakages of "secrets" may also face punishment of up to five years imprisonment under Article 25(1). These penalties are excessive and will have a chilling effect on whistle blowers.

3) Lack of Protections for Whistle blowers and Journalists Creates a Chilling Effect

The Secrecy Act provides no protections for whistle blowers. Although the Whistle blower Protection Act (hereinafter "WPA") was enacted and enforced before the Secrecy Act, the scope of protection of whistle blowers under the WPA is limited to civil liability and does not cover criminal liability under the Secrecy Act.

The government established internal procedure for whistle blower's communication under the Guidelines by setting up reporting desks in the cabinet office and ministries, however, the system is not effective.

First, the Guidelines require whistle blowers to report wrongdoing without stating the designated secret itself. Thus, whistle blowers can only speak in generalities.

Second, whistle blowers must report wrongdoing primarily to the desks in each ministry before to the cabinet office.

Third, the independence of the desks in each ministry is not guaranteed since the persons in charge of the reporting desks are bureaucrat in the ministry.

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[1] Human Rights Now is a Tokyo based international human rights NGO with ECOSOC consultative status. A Japan based lawyers groups, the League of Lawyers Against the State Secret Act(LLASSA) is associated with this statement on the part of Secrecy Act.

[2] Liberal Democratic Party of Japan, https //www jimin jp/english/news/126424 html

Journalists may also face criminal penalties under the Secrecy Act. Because Article 23(2) includes criminal penalties for those who receive and subsequently disclose "secrets", journalists fall within the scope of the Secrecy Act. Article 22(2) does exclude news coverage from prosecution as long as it is performed in the public interest, lawfully, and not using extremely unreasonable means. However, these terms are vague to allow arbitrary interpretation. As such, journalists may still be included.

3. Concerns over Government Interference in the Media

1) LDP's demands to the Media

Recently, the Japanese government vocally and openly demanded "neutral and fact based media reporting", in particular on political matters, to the broadcasting companies by invoking the Japanese Broadcast Act.[3]

In November 2014, the ruling party LDP sent a letter to all the major broadcasting companies demanding "fair and neutral reporting." Further, LDP sent an additional letter to TV Asahi criticizing its reports over PM Abe's economic policy, and reiterated its demand for "fair and neutral reporting." [4]

Although LDP claims this was not "pressure", some believe it is an implicit threat against the media, considering the fact that the government has control over broadcasting licenses under the Broadcast Act.

2) Media was summoned and threatened for removal of broadcasting licenses

Recent case of LDP' involvement with TV Asahi and NHK is another grave concern.

On April 17, 2015, the LDP investigative committee summoned executives from both stations to explain certain "scandals" that had recently plagued the television stations. In the case of TV Asahi especially, the summons was in response to an incident in which a commentator had suggested on air that he was being removed from the TV news program "Hodo Station" due to pressure from the Cabinet office. The commentator, Mr. Koga had been a frequent critic of the Abe administration.[5]

Immediately after Koga's comment, Chief Cabinet Secretary denied the fact and criticized the reporting of TV Asahi by invoking the Broadcast Act. This led to an apology on the matter by the executive of TV Asahi.

After the investigative meeting, the head of the LDP committee suggested that LDP will consider filing a complaint to the Broadcasting Ethics and Program Improvement Organization (BPO). He noted *"We will act upon the Japanese Broadcast Act when reporting distorts the fact. The government has power to remove licenses."*[6]

3) Excessive interference is not consistent with international and domestic law

This series of threats and interferences will have a chilling effect on media reporting and could impair free speech.[7] In fact, the Broadcast Act requires stations to seek approval for broadcasting licenses and renewals. If the government removes licenses from broadcasting companies which do not follow government requests, it is impossible for the Japanese media to remain autonomous and impartial.

The Japanese Broadcast Act guarantees freedom of expression for broadcasting companies.

The purpose of the Broadcast Law, as defined in Article 1, is to "ensure freedom of expression through broadcasting by guaranteeing the impartiality, truth and autonomy of broadcasting". Further, Article 3 provides that broadcast programs will not be interfered with or regulated except as pursuant to the law.

The Abe Administration and LDP frequently invoke Article 4 of the Broadcast Act, which requires broadcasters to be politically neutral and not distort the facts. However, the article is interpreted that each media company shall make an effort to meet its responsibilities voluntarily. Given Article 3, even Article 4 cannot justify government interference with the media.

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[3]The Economist (16 May) Available at: http://www.economist.com/news/asia/21651295-japans-media-are-quailing-under-government-pressure-speak-no-evil

[4]Asahi Shimbun (10 April) Available at: http://www.asahi.com/articles/ASH4B3SDNH4BUTFK004.html?iref=reca and see Japan Times (22 April) Available at: http://www.japantimes.co.jp/opinion/2015/04/22/editorials/political-pressure-broadcasters/#.VV3yIPmqqkr

[5]The Guardian (16 April) Available at: http://www.theguardian.com/world/2015/apr/16/japanese-media-political-pressure-shinzo-abe-critic

[6]Asahi Shimbun (18 April) Available at: http://www.asahi.com/articles/DA3S11710894.html

[7]Asahi Shimbun (17 April) Available at: http://ajw.asahi.com/article/views/editorial/AJ201504170037

The threats and interference of the government is not consistent with the Article 21 of Japanese Constitution or the Article 19 of the ICCPR.

4 Confiscating a Passport from a free journalist

In February, the Japanese government suddenly confiscated the passport of Mr. Yuichi Sugimoto, a free journalist who planned to visit Syria.[8] The confiscation came immediately after a video release of two Japanese being killed, including journalist Kenji Goto by ISIS. It was a measure to prevent the journalist from traveling to Syria. The government defended its decision as necessary to "secure the safety of" Japanese overseas.

In March, Sugimoto applied for new passport, but he has given a passport with prohibitions to travel to Syria and Iraq. Without passports, journalists cannot work on international affairs, especially situations of armed conflict. Excessive restrictions on journalists constitute clear violations of the freedom of press and access to information.

4. Recommendations

This series of incidents shows an escalation of government control over media and journalists. Enforcement of the Secrecy Act, confiscation of passports, and intimidation through the removal of broadcasting licenses will cause a substantial chilling effect across the entire media and field of journalism in Japan.

HRN urges the Japanese government

To respect and protect freedom of expression in accordance with ICCPR Article 19

To refrain from any interference to the Japanese media.

To review the Special Secret Act in accordance with ICCPR Article 19

HRN calls on the international community, OHCHR and this Council

To recommend the Japanese government improves the situation of freedom of expression

HRN asks the UN special rapporteur on the freedom of expression

To conduct a fact finding mission to Japan to address the issues described in this statement.

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[8] Japan Times (9 February) Available at: http://www.japantimes.co.jp/news/2015/02/09/national/foreign-ministry-takes-freelance-photographers-passport-prevent-trip-syria/#.VWAtaukw95F